Unlike earlier chapters, there is not much discussion of the jury and its decision-making procedures.

The concluding chapter begins by giving an account of two processes in recent German history. The role of the government assistant to the judge in the Nazi courts to ensure that the "*Führerprinzip*" was respected in all decisions. The second is the decision-making of a more conventional kind in the *Bundesverfassungsgericht* (German Constitutional Court), where minority opinions are permitted. A short section on the Roman Rota after the Code of Canon Law of 1917 is followed by a short presentation on the practice of collegial arbitration panels.

The author concludes with three pages on the way in which contemporary principles of open justice require the views of individual judges to be transparent and not secret and that the individual responsibility of the judge should lead to a willingness to permit dissenting opinions. Methods of decision-making would then be more open to discussion and processes of "layered decision-making" could be carefully installed to ensure rational and consistent justice.

The choice of a country-based presentation over a thematic presentation has disadvantages. It is clear from the different chapters that ideas on these topics were not considered in linguistically sealed groupings. Scholars of one tradition were well aware of the solutions adopted in other countries. This is not surprising since, before 1790, France was legally disunited and Germany even more so. There were relatively few scholars in the different countries and it is not surprising that they read each other's work. Roman law was a common point of reference and part of legal education, including in the common law world. Whilst it is true that today the different jurisdictions are held together by countries and different academic communities, this has not always been the case. A thematic approach might have focused on the special concerns in criminal law, especially the view that there should be a higher majority required to convict someone of an offence, compared with the civil law. On the other hand, the problems of differences of view over the criminal penalty are more straightforward than differences of view about the remedy in commercial transactions. A grouping around problems rather than countries would have been more useful. This is even more so because the long chapters on opinions in the different countries do not lead, in the end, to conclusions about the legal community in question. We learn that there were divergences and lack of certainty, but we do not learn insights into the nature of the legal community which led it to its own particular solution.

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The Duty to Account: Development and Principles. By J.A. WATSON [Sydney: Federation Press, 2016. 240 pp. Hardback A$90.00. ISBN 978-1-76-002066-8.]

At its very outset, *The Duty to Account* claims that its purpose "is to invite a larger consideration of the doctrine of account, including having regard to its long history and modern utility, as the premises and foundation of many and varied relationships recognised in law and equity today". It lives up to this promise: the book is a long overdue consideration of the nature and history of account. Modern treatments of the topic – those best known are the writings of Steven Elliott – do not explore the evolution of accounting, whilst David Ibbetson's seminal *Historical Introduction to the Law of Obligations* (1999) is organised according to tort, contract and unjust

enrichment: account is only dealt with within these categories. The work is given contemporary relevance by *AIB Group (UK) plc v Mark Redler & Co. Solicitors* [2014] UKSC 58; [2015] A.C. 1503 and *Novoship (UK) Ltd. v Mikhaylyuk* [2014] EWCA Civ 908; [2015] Q.B. 499, which respectively revived debates about the extent to which liabilities to account for breach of trust or dishonest assistance differ from liability at common law for tort or breach of contract. The book is also relevant to recent attempts to rationalise the normative basis of claims in unjust enrichment.

Watson examines the topic as follows. Part I looks at the development of account in the medieval and early modern periods, and how it fell out of use as it became procedurally disadvantageous: this is the most narrative part of the book, and is a useful overview of the printed materials on point. Part II gives an outline of the way accounts were taken, mostly using materials ranging from the 1300s to the 1600s. Part III contains the meat of the book. Therein, chapters 6 and 7 consider which parties were liable to a claim for account in law and equity respectively: these different categories of defendants, though they were recognised as such at different historical periods, are set out side by side; chapter 8 sets out what Watson describes as the "Principles of the Duty to Account", rules which the author argues have continuously applied to account claims since the middle ages; chapter 9 sets out a research agenda for exploring further the relationship between money had and received (hence unjust enrichment) and account; while chapter 10 sets out a framework for examining when actions which amount to torts or breach of contract could also give rise to liability to account.

In outline, Watson argues that wherever a person receives property which he or she is not allowed to use freely, that person is an "accounting party". That person must, therefore, account for profits derived from the property, and for its use, to the person ultimately entitled to the property in question. Such liability is argued to be distinctive, and so separate from contract, tort, unjust enrichment, trusts or fiduciary law.

The book is an admirable attempt to deal with a difficult topic, and Watson shows that account has a long history in English law and that its history is relevant to modern debates. For the first time, it puts together printed materials concerning account in an analysis which cuts across the doctrinal areas of tort, contract and unjust enrichment. It serves as a timely reminder that this conventionally accepted taxonomy of the English law of obligations is not absolute. The work also convincingly links the emergence and development of a range of areas of law to account, including trusts, agency and the law concerning breach of confidence. The work is particularly significant in undercutting the tendency of historians of trusts to focus on the development of the use: Watson has identified account as another significant strain in the genealogy of trusts law, which it is to be hoped other scholars will build upon.

Watson's book, then, is an original and valuable contribution to scholarship, which will provoke thought amongst scholars and legal practitioners alike. However, a few observations might be made. First, as Watson admits, the book is of a narrow scope in that it focuses on the question of *who* owed a duty to account, rather than the accounting process itself. Such questions as whether enquiries into causation of loss were traditionally permitted or required where accounts were falsified are beyond the scope of this work. The book's scope is also narrow in a different sense: Watson's analysis is conducted entirely from printed sources, and makes no use of archival material. This necessarily gives it a synoptic feel given the absence of regular printed reports and treatises for most of the period it purports to cover, though printed editions of materials beyond the English reports are used.

Second, the book is essentially a work of modern private law rather than legal history. The development of the law is not Watson's core concern, and he does not set out a narrative of the evolution of account beyond its earliest stages. Instead, Watson reaches back to material from different historical eras to support abstract propositions about its nature. It is not uncommon for a single paragraph to present features of account in the abstract, and to cite cases from the fourteenth, seventeenth and twenty-first centuries altogether, taking it for granted that understandings of the duty to account in each period were similar enough to be directly comparable. This lack of narrative means that key questions about the history of account are ultimately left unanswered. Why did accounting move from the common law courts to Chancery? How did the incidents of the duty to account change? Did account as a cause of action simply come to be subsumed within the categories it influenced? Watson appears to be of the view that account has existed as a single cause of action with fixed incidents from the time of the Year Books to the present day, but his use of historical material does not prove this: his methodology presupposes it.

Third, while Watson's suggestions about how account influenced the development of other areas are persuasive, his arguments that accounting ideas underlie modern doctrines are less clear cut. For instance, Watson's formulation of when an account claim will arise is hard to reconcile with his assertion that account might be understood as the conceptual basis of mistaken payment claims. He cites sixteenth and seventeenth century authority to show that account claims in the past could be used to recover mistaken payments, and then goes on to suggest how a mistake claim might be accommodated within an accounting framework. However, while the account rules might have influenced the development of those governing mistaken payment, it is difficult to reconcile a modern claim for mistaken payment with Watson's formulation of account. As mentioned above, Watson argues that an account claim arises whenever anyone receives property which the person is not allowed to use freely, which continues as the property of another. However, where *A* pays *B* by mistake in modern law, *B* is free to use the money in question, which in no sense continues to belong to *A*. This is why *B* is liable only for the *value* of the payment, why *A*'s claim is personal, and why *A* could not trace the money handed to *B*, or claim profits made by investing it. Were *B* not free to use the money in question, then he would hold it on a trust for *A*. Watson must be right in asserting that a personal claim to account can be distinguished from an equitable proprietary claim, but in the mistaken payment situation it is hard to see how *A* could ever acquire an account claim as Watson defines it without also acquiring a property right. Conversely, his reasoning does not explain *B*'s personal liability in cases where no trust has arisen. It may be that Watson sees *A* as in some sense remaining "owner" of the money in all mistaken payment cases, even when property in the money has passed, but the argument is not clearly made out.

These concerns aside, the book is a thought-provoking and welcome foray into an important and interesting area, with the potential to blow open a whole series of modern doctrinal and legal historical debates. It is to be hoped it receives the attention it deserves.

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